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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XF776

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Gull and Climate Research in Glacier Bay National Park, Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; Issuance of Incidental Harassment Authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the National Park Service to take, by harassment, one species of marine mammal incidental to glaucous winged gull and climate monitoring research activities in Glacier Bay National Park (GLBA NP), Alaska.

DATES: This IHA is applicable from March 1, 2018 through February 28, 2019.

FOR FURTHER INFORMATION CONTACT: Jonathan Molineaux, Office of Protected Resources, NMFS, and (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Availability

An electronic copy of the IHA and supporting documents, as well as a list of the references cited in this document, may be obtained online at:

www.nmfs.noaa.gov/pr/permits/incidental/research.htm. In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION**

CONTACT).

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

An IHA for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption

of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On August 31 2017, NMFS received a request from the NPS for an IHA to take marine mammals incidental to glaucous-winged gull and climate monitoring research activities in GLBA NP, Alaska. The application was considered adequate and complete on November 1, 2017. NPS's request is for take of harbor seals by Level B harassment. NMFS previously issued four IHAs to the NPS for similar work (82 FR 24681, May 20, 2017; 81 FR 34994, June 1, 2016; 80 FR 28229, March 24, 2015; 79 FR 56065, September 18, 2014). Neither NPS nor NMFS expect mortality to result from the research and, therefore, an IHA is appropriate.

Description of the Specified Activity

A detailed description of the planned GLBA NP project is provided in the *Federal Register* notice for the proposed IHA (82 FR 56953; December 1, 2017). Since that time, no changes have been made to the planned activities. Therefore, we provide only a summary here. Please refer to that *Federal Register* notice for the full description of the specific activity.

NPS plans to conduct two research projects within GLBA NP, southeast Alaska: 1) glaucous-winged gull monitoring and 2) the installation and maintenance of a weather station operation for long-term climate monitoring. NPS will conduct ground and vessel surveys at four study sites within GLBA NP for gull monitoring: Boulder Island, Lone Island, Geikie Rock, and Flapjack Island. These sites will be accessed up to five times per year. In addition, NPS will access Lone Island an additional four times per year for weather station installation, maintenance, and operation bringing the total number of site visits to Lone Island to nine. This includes adding one additional trip for any emergency repairs that may be needed. Researchers

accessing the islands for gull monitoring and weather station operation may occasionally cause behavioral disturbance (or Level B harassment) of harbor seals. NPS expects that the disturbance to harbor seals from both projects will be minimal and only limited to Level B harassment.

The purposes for the above-mentioned research activities are as follows. Gull monitoring studies are mandated by a Record of Decision of a Legislative Environmental Impact Statement (LEIS) (NPS 2010) which states that NPS must initiate a monitoring program for glaucous-winged gulls (*Larus glaucescens*) to inform future native egg harvest by the Hoonah Tlingit in Glacier Bay, Alaska. Installation of a new weather station on Lone Island is being planned as one of several installations intended to fill coverage gaps among existing weather stations in GLBA NP (NPS 2015a). These new stations will be operated as the foundation of a new long-term climate-monitoring program for GLBA NP.

Comments and Responses

A notice of NMFS's proposal to issue an IHA to the NPS was published in the *Federal Register* on December 1, 2017 (82 FR 56953). That notice described, in detail, GLBA NP's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment period, NMFS received one comment letter from the Marine Mammal Commission (Commission).

Comment 1: The Commission recommended that NMFS enumerate the number of harbor seals that could be taken during the planned activities by applying standard rounding rules before summing the numbers of estimated takes across survey sites and survey days.

Response: Calculating predicted take is not an exact science and there are arguments for taking different mathematical approaches in different situations, and for making qualitative

adjustments in other situations. NMFS is currently engaged in developing a protocol to guide more consistent take calculation given certain circumstances. We believe, however, that the methodology for this action remains appropriate.

Description of Marine Mammals in the Area of Specified Activities

A detailed description of the species likely to be affected by the NPS project, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, are provided in NPS's application and the *Federal Register* notice for the proposed IHA (82 FR 56953; December 1, 2017). We are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that *Federal Register* notice for these descriptions. Please refer to additional species information available in the NMFS SARs for Alaska at <http://www.nmfs.noaa.gov/pr/sars/region.htm>.

Table 1. Marine Mammals that Could Occur in the Project Area.

Common name	Scientific name	Stock	ESA/MMPA status; Strategic (Y/N) ¹	Stock abundance (CV, N _{min} , most recent abundance survey) ²	PBR	Annual M/SI ³
Order Carnivora – Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions)						
<i>Steller's sea lion</i>	<i>Eumetopias jubatus</i>	Eastern U.S.	-/-; N	41,638 (n/a, 41,638, 2015)	306	236
		Western U.S.	E/D; Y	50,983	2,498	108
Family Phocidae (earless seals)						
Harbor seal	<i>Phoca vitulina richardii</i>	Glacier Bay / Icy Strait	-/-; N	7,210 (n.a.; 5,647; 2011)	169	104

1 - Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

2- NMFS marine mammal stock assessment reports online at: www.nmfs.noaa.gov/pr/sars/. CV is coefficient of variation; Nmin is the minimum estimate of stock abundance.

3 - These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

NOTE - Italicized species not authorized for take

Both species in Table 1 are protected under the MMPA and the Steller sea lion is listed as endangered (Western Distinct Population Segment) under the Endangered Species Act (ESA). It was determined that take will not occur for Steller sea lions based on available survey data and for the fact that NPS will maintain a distance of 100 meters from all Steller sea lions in the action area. Therefore, Steller sea lions are not discussed further in this IHA.

Potential Effects of Specified Activities on Marine Mammals and their Habitat

The *Federal Register* notice for the proposed IHA (82 FR 56953; December 1, 2017) included a discussion of the effects of disturbance on marine mammals and their habitat, therefore that information is not repeated here; please refer to the *Federal Register* notice (82 FR 56953; December 1, 2017) for that information. We provide only a summary here.

The project will not result in permanent impacts to habitats used directly by marine mammals, such as haul out sites, nor impacts to food sources. Based on the available data, previous monitoring reports from GLBA NP, and studies described in the proposed IHA, we anticipate that any pinnipeds found in the vicinity of the project could have short-term behavioral reactions (*i.e.*, may result in marine mammals avoiding certain areas) due to noise and visual disturbance generated by: (1) motorboat approaches and departures and (2) human presence during gull research activities. We expect pinnipeds to return to a haul out site within minutes to hours of the stimulus based on previous research (Johnson and Acevedo-Gutierrez, 2007; Allen

et al., 1985). Pinnipeds may be temporarily displaced from their haul out sites, but we do not expect that the pinnipeds will permanently abandon a haul out site during site monitoring as activities are short in duration (30 minutes to up to 2 hours), and previous surveys have demonstrated that seals have returned to their haul out sites and have not permanently abandoned the sites.

Estimated Take

This section provides the amount of take authorized in the IHA, which informs both NMFS's consideration of whether the number of takes is "small" and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines "harassment" as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes will be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to motorboats and the presence of NPS personnel. Based on the nature of the activity, Level A harassment is neither anticipated nor authorized. As described previously, no mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

Harbor seals may be disturbed when vessels approach or researchers go ashore for the purpose of monitoring gull colonies and for the installation and maintenance of the Lone Island

weather tower. Harbor seals tend to haul out in small numbers at study sites. Using monitoring report data from 2015 to 2017 (see raw data from Tables 1 of the 2017, 2016 and 2015 Monitoring Reports), the average number of harbor seals per survey visit was calculated to estimate the approximate number of seals observers will find on any given survey day. As a result, the following averages were determined for each island: Boulder Island – average 3.45 seals, Flapjack Island – average 10.10 seals, Geikie Rock – average 9.58 seals, and Lone Island average of 18.63 seals (See Table 5). Estimated take for gull and climate monitoring was calculated by multiplying the average number of seals observed during past gull monitoring surveys (2015-2017) by the number of total site visits. This includes five visits to Boulder Island, Flapjack Island, and Geikie Rock and nine visits to Lone Island (to include four site visits for climate monitoring activities). Therefore, the total incidents of harassment equals 283 (See Table 5).

During climate monitoring, which is expected to take place between March 2018 to April 2018, and October 2018 to February 2019, seal numbers are expected to dramatically decline within the action area. Although harbor seal survey data within GLBA NP is lacking during the months of October through February, results from satellite telemetry studies suggest that harbor seals travel extensively beyond the boundaries of GLBA NP during the post-breeding season (September-April) (Womble and Gende, 2013b). Therefore, using observation data from past gull monitoring activities (that occurred from May to September) is applicable when estimating take for climate monitoring activities, as it will provide the most conservative estimates.

Table 2. Level B takes by harassment during NPS gull and climate monitoring activities.

Site for survey	Average number of seals observed Per Visit*	Number of site visits	Level B take ¹	Percentage of Population
Boulder Island	3.45 seals	5	17.27	0.24
Flapjack Island	10.10 seals	5	50.50	0.70
Geikie Rock	9.58 seals	5	47.92	0.66
Lone Island	18.63 seals	9**	167.73	2.33
Total			283	3.93

*Data from 2015-2017 NPS gull surveys (NPS 2015b; NPS 2016; NPS 2017).

**Number includes four additional days for climate monitoring activities

Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, “and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking” for certain subsistence uses. NMFS regulations require applicants for IHAs to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

1) the manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat, as well as subsistence uses. This considers the nature of the potential adverse

¹See Table 3 for NMFS’ three-point scale that categorizes pinniped disturbance reactions by severity. NMFS only considers responses falling into Levels 2 and 3 as harassment (Level B) under the MMPA.

impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned) the likelihood of effective implementation (probability implemented as planned). and;

2) the practicability of the measures for applicant implementation, which may consider such things as cost and impact on operations.

Mitigation for Marine Mammals and their Habitat

To reduce the potential for disturbance from acoustic and visual stimuli associated with gull and climate monitoring activities within GBLA NP, several mitigation measures for marine mammals were selected for the NPS to conduct. The following is a summation of those mitigation measures presented in the final IHA:

Pre-Survey Monitoring

Prior to deciding to land onshore to conduct gull and climate monitoring, NPS researchers will use high-powered image stabilizing binoculars from their watercraft to document the number, species, and location of hauled-out marine mammals at each island. The vessels will maintain a distance of 328 to 1,640 ft (100 to 500 m) from the shoreline to allow the researchers to conduct pre-survey monitoring. If offshore predators, harbor seal pups of less than one week of age, or Steller sea lions are observed, researchers will follow the protocols for site avoidance discussed below. If neither of these instances occur, researchers will then perform a controlled landing on the survey site.

Site Avoidance

If a harbor seal pup less than one week old is observed near or within the action area, researchers will not go ashore to conduct the gull or climate monitoring activities. Also, if Steller

sea lions are observed within or near the study site, researchers will maintain a distance of at least 100 m from the animals at all times.

Controlled Landings

The researchers will determine whether to approach the island based on type of animals present. Researchers will approach the island by motorboat at a speed of approximately 2 to 3 knots (2.3 to 3.4 mph). This will provide enough time for any marine mammals present to slowly enter the water without panic (flushing). The researchers will also select a pathway of approach farthest from the hauled-out harbor seals to minimize disturbance.

Minimize Predator Interactions

If the researchers visually observe marine predators (*i.e.*, killer whales) present in the vicinity of hauled-out marine mammals, the researchers will not approach the study site.

Disturbance Reduction Protocols

While onshore at study sites, the researchers will remain vigilant for hauled-out marine mammals. If marine mammals are present, the researchers will move slowly and use quiet voices to minimize disturbance to the animals present.

Based on our evaluation of the applicant's measures, as well as other measures considered by NMFS, NMFS has determined that the mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, areas of similar significance, and on the availability of such species or stock for subsistence uses.

Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth, requirements pertaining to the monitoring and reporting of such taking.

The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

GLBANP submitted a marine mammal monitoring plan in section 13 of their application. Monitoring requirement NMFS prescribes shall improve our understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.*, presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.*, source characterization, propagation, ambient noise); (2) affected species (*e.g.*, life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.*, age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.*, marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and

- Mitigation and monitoring effectiveness.

NPS will conduct marine mammal monitoring during the project, in order to implement the mitigation measures that require real-time monitoring and to gain a better understanding of marine mammals and their impacts to the project's activities. The researchers will monitor the area for pinnipeds during all research activities. Monitoring activities will consist of conducting and recording observations of pinnipeds within the vicinity of the proposed research areas. The monitoring notes will provide dates, location, species, the researcher's activity, behavioral state, numbers of animals that were alert or moved greater than one meter, and numbers of pinnipeds that flushed into the water.

The method for recording disturbances is based on those developed by Mortenson (1996). NPS will record disturbances on a three-point scale that represents an increasing seal response to the disturbance (Table 3). NPS will record the time, source, and duration of the disturbance, as well as an estimated distance between the source and haul out. NMFS considers only responses falling into Levels 2 and 3 as harassment under the MMPA.

Table 3. Seal response to disturbance.

Level	Type of response	Definition
1	Alert	Seal head orientation or brief movement in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, changing from a lying to a sitting position, or brief movement of less than twice the animal's body length. Alerts will be recorded, but not counted as a 'take'.
2	Movement	Movements in response to the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats over the beach, or if already moving a change of direction of greater than 90 degrees. These movements will be recorded and counted as a 'take'.
3	Flush	All retreats (flushes) to the water. Flushing into the water will be recorded and counted as a 'take'.

Previous Monitoring Results

As described in the notice of proposed IHA, NPS has complied with the monitoring requirements under the previous authorizations. NMFS posted the 2017 report on our website at

www.nmfs.noaa.gov/pr/permits/incidental/research.htm and the results from the previous NPS monitoring reports. These reports support our findings that the mitigation measures required under the 2014 - 2017 IHAs provide the means of effecting the least practicable impact on the species or stock.

Coordination

NPS will add to the knowledge of pinnipeds in the proposed action area by noting observations of: (1) unusual behaviors, numbers, or distributions of pinnipeds, such that any potential follow-up research can be conducted by the appropriate personnel; (2) tag-bearing carcasses of pinnipeds, allowing transmittal of the information to appropriate agencies and personnel; and (3) rare or unusual species of marine mammals for agency follow-up. NPS actively monitors harbor seals at breeding and molting haul out locations to assess trends over time (*e.g.*, Mathews & Pendleton, 2006; Womble *et al.* 2010, Womble and Gende, 2013b). This monitoring program involves collaborations with biologists from the Alaska Department of Fish and Game, and NMFS' Alaska Fisheries Science Center. NPS will continue these collaborations and encourage continued or renewed monitoring of marine mammal species. NPS will coordinate with state and Federal marine mammal biologists to determine what additional data or observations may be useful for monitoring marine mammals and haul outs in GLBA NP. Additionally, NPS will report vessel-based counts of marine mammals, branded, or injured animals, and all observed disturbances to the appropriate state and Federal agencies.

Reporting

NPS is required to submit a draft monitoring report to NMFS no later than 90 days after the expiration of the Incidental Harassment Authorization or sixty days prior to the issuance of any subsequent IHA for this project, whichever comes first. The report will include a summary

of the information gathered pursuant to the monitoring requirements set forth in the Authorization. NPS will submit a final report to NMFS within 30 days after receiving comments on the draft report. If NPS receives no comments from NMFS on the report, NMFS will consider the draft report to be the final report.

The report will describe the operations conducted and sightings of marine mammals near the proposed project. The report will provide full documentation of methods, results, and interpretation pertaining to all monitoring. The report will provide:

1. A summary and table of the dates, times, and weather during all research activities;
2. Species, number, location, and behavior of any marine mammals observed throughout all monitoring activities;
3. An estimate of the number (by species) of marine mammals exposed to acoustic or visual stimuli associated with the research activities; and
4. A description of the implementation and effectiveness of the monitoring and mitigation measures of the Authorization and full documentation of methods, results, and interpretation pertaining to all monitoring.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the authorization, such as an injury (Level A harassment), serious injury, or mortality (*e.g.*, vessel-strike, stampede, etc.), NPS shall immediately cease the specified activities and immediately report the incident to the Office of Protected Resources, NMFS and the Alaska Regional Stranding Coordinator. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;

- Description and location of the incident (including tide level if applicable);
- Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

NPS shall not resume its activities until NMFS is able to review the circumstances of the prohibited take. NMFS will work with NPS to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. NPS may not resume their activities until notified by us via letter, email, or telephone.

In the event that NPS discovers an injured or dead marine mammal, and the lead researcher determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.*, in less than a moderate state of decomposition as we describe in the next paragraph), NPS will immediately report the incident to the Office of Protected Resources, NMFS and the Alaska Regional Stranding Coordinator. The report must include the same information identified in the paragraph above this section. Activities may continue while we review the circumstances of the incident. We will work with NPS to determine whether modifications in the activities are appropriate.

In the event that NPS discovers an injured or dead marine mammal, and the lead visual observer determines that the injury or death is not associated with or related to the authorized activities (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition,

or scavenger damage), NPS will report the incident to the incident to the Office of Protected Resources, NMFS and the Alaska Regional Stranding Coordinator within 24 hours of the discovery. NPS researchers will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to us. NPS can continue their research activities.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be “taken” through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.*, intensity, duration), the context of any responses (*e.g.*, critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS’s implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.*, as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

Due to the project’s minimal levels of visual and acoustic disturbance, NMFS does not expect NPS’s specified activities to cause long-term behavioral disturbance, abandonment of the

haul out area, injury, serious injury, or mortality. Additional factors for our negligible impact determination are listed below:

- The takes from Level B harassment will be due to potential behavioral disturbance. The effects of the research activities will be limited to short-term startle responses and localized behavioral changes due to the short and sporadic duration of the research activities;
- The proposed activities will not take place in areas of significance for marine mammal feeding, resting, breeding, or pupping and will not adversely impact marine mammal habitat;
- The proposed activities will affect a small portion of harbor seal habitat within GLBA NP for only a short amount of time. This, combined with a large availability of alternate areas for pinnipeds to haul out enables the seals to effectively avoid disturbances from research operations;
- Anecdotal observations and results from previous monitoring reports show that the pinnipeds returned to the various sites and did not permanently abandon haul out sites after NPS conducted their research activities; and
- Harbor seals may flush in the water despite researchers best efforts to keep calm and quiet around seals; however, injury or mortality has never been documented nor is anticipated from flushing events. Researchers will approach study sites slowly to provide enough time for any marine mammals present to slowly enter the water without panic.

As stated, NMFS does not anticipate any injuries, serious injuries, or mortalities to result from NPS's proposed activities and we do not propose to authorize injury, serious injury, or mortality. Harbor seals may exhibit behavioral modifications, including temporarily vacating the area during the proposed gull and climate research activities to avoid human disturbance.

Further, these proposed activities will not take place in areas of significance for marine mammal feeding, resting, breeding, or pupping and will not adversely impact marine mammal habitat. Due to the nature, degree, and context of the behavioral harassment anticipated, we do not expect the activities to impact annual rates of recruitment or survival.

NMFS does not expect pinnipeds to permanently abandon any area surveyed by researchers, as is evidenced by continued presence of pinnipeds at the sites during annual gull monitoring. In summary, NMFS anticipates that impacts to hauled-out harbor seals during NPS' research activities will be behavioral harassment of limited duration (*i.e.*, up to two hours per visit) and limited intensity (*i.e.*, temporary flushing at most).

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Section 101(a)(5)(D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

As mentioned previously, NMFS estimates that NPS' activities could potentially affect, by Level B harassment only, one species of marine mammal under our jurisdiction. For harbor seals, this estimate is small (3.93 percent, see Table 4) relative to the Glacier Bay/Icy Strait stock of harbor seals (7,210 seals, see Table 1). In addition to this, there is a high probability that repetitive takes of the same animals may occur which reduces the percentage of population even further.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no subsistence uses of the affected marine mammal stocks or species implicated by this action. NPS prohibits subsistence harvest of harbor seals within the GLBA NP (Catton, 1995). Therefore, NMFS has determined that the total taking of affected species or stocks will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

National Environmental Policy Act

Issuance of an MMPA 101(a)(5)(D) authorization requires compliance with the National Environmental Policy Act.

NMFS determined the issuance of the proposed IHA is consistent with categories of activities identified in CE B4 (issuance of incidental harassment authorizations under section 101(a)(5)(A) and (D) of the MMPA for which no serious injury or mortality is anticipated) of the Companion Manual for NAO 216-6A and we have not identified any extraordinary

circumstances listed in Chapter 4 of the Companion Manual for NAO 216-6A that would preclude this categorical exclusion.

Endangered Species Act (ESA)

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Authorization

NMFS has issued an IHA to the NPS at Glacier Bay NP for the harassment of small numbers of harbor seals incidental to conducting monitoring and research studies on glaucous-winged gulls within GLBA NP, Alaska provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: February 9, 2018.

Donna S. Wieting,
Director, Office of Protected Resources,
National Marine Fisheries Service.

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